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105TH CONGRESS
1ST SESSION

H. R. 2632

To amend title XI and title XVIII of the Social Security Act to combat health care fraud and abuse.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1997

Mr. STARK introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Commerce, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XI and title XVIII of the Social Security Act to combat health care fraud and abuse.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECU-**
4 **RITY ACT; TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Medicare and Medicaid Beneficiary Protection Act of
7 1997”.

8 (b) **AMENDMENTS TO SOCIAL SECURITY ACT.**—Ex-
9 cept as otherwise specifically provided, whenever in this

1 section (f) (and recertifies in such a form and man-
 2 ner,'.

3 (d) EFFECTIVE DATE.—The amendments made by
 4 subsections (a)(2), (b)(2), and (c)(2) shall apply to certifi-
 5 cations and recertifications made on or after 6 months
 6 after the date the Secretary of Health and Human Serv-
 7 ices publishes a standard form and manner for such cer-
 8 tifications and recertifications under the amendments
 9 made by subsections (a)(1), (b)(1), and (c)(1) respectively.

10 **SEC. 206. NO MARK-UP FOR DRUGS, BIOLOGICALS, OR NU-**
 11 **TRIENTS; USE OF NATIONAL DRUG CODE**
 12 **NUMBERS IN MEDICARE CLAIMS.**

13 (a) NO MARK-UP FOR DRUGS OR BIOLOGICALS.—

14 (1) IN GENERAL.—Section 1842(o) (42 U.S.C.
 15 1395u(o)), as added by section 4556(a) of the Bal-
 16 anced Budget Act of 1997, is amended to read as
 17 follows:

18 “(o)(1) For purposes of section 1833(a)(1)(S), the
 19 payment amount established in this subsection for a drug
 20 or biological shall be the lowest of the following:

21 “(A) The actual acquisition cost, as defined in
 22 paragraph (2), to the person submitting the claim
 23 for payment for the drug or biological.

24 “(B) The average wholesale price of such drug
 25 or biological, as determined by the Secretary.

1 “(C) For payments for drugs or biologicals fur-
2 nished on or after January 1, 2000, the median ac-
3 tual acquisition cost of all claims for payment for
4 such drugs or biologicals for the 12-month period
5 beginning July 1, 1998 (and adjusted, as the Sec-
6 retary determines appropriate, to reflect changes in
7 the cost of such drugs or biologicals due to inflation,
8 and such other factors as the Secretary determines
9 appropriate).

10 “(D) The amount otherwise determined under
11 this part.

12 “(2) For purposes of paragraph (1)(A), the term ‘ac-
13 tual acquisition cost’ means, with respect to such drugs
14 or biologicals the cost of the drugs or biologicals based
15 on the most economical case size in inventory on the date
16 of dispensing or, if less, the most economical case size pur-
17 chased within six months of the date of dispensing wheth-
18 er or not that specific drug was furnished to an individual
19 whether or not enrolled under this part. Such term in-
20 cludes appropriate adjustments, as determined by the Sec-
21 retary, for all discounts, rebates, or any other benefit in
22 cash or in kind (including travel, equipment, or free prod-
23 ucts). The Secretary shall include an additional payment
24 for administrative, storage, and handling costs.

1 “(3)(A) No payment shall be made under this part
2 for drugs or biologicals to a person whose bill or request
3 for payment for such drugs or biologicals does not include
4 a statement of the person’s actual acquisition cost.

5 “(B) A person may not bill an individual enrolled
6 under this part—

7 “(i) any amount other than the payment
8 amount specified in paragraph (1) or (4) (plus any
9 applicable deductible and coinsurance amounts), or

10 “(ii) any amount for such drugs or biologicals
11 for which payment may not be made pursuant to
12 subparagraph (A).

13 “(C) If a person knowingly and willfully in repeated
14 cases bills one or more individuals in violation of subpara-
15 graph (B), the Secretary may apply sanctions against that
16 person in accordance with subsection (j)(2).

17 “(4) The Secretary may pay a reasonable dispensing
18 fee (less the applicable deductible and coinsurance
19 amounts) for drugs and biologicals to a licensed pharmacy
20 approved to dispense drugs or biologicals under this part,
21 if payment for such drugs or biologicals is made to the
22 pharmacy.”.

23 (2) EFFECTIVE DATE.—The amendments made
24 by paragraph (1) apply to drugs and biologicals fur-
25 nished on or after January 1, 1998.

1 (3) ELIMINATION OF REPORT ON AVERAGE
2 WHOLESALE PRICE.—Section 4556 of the Balanced
3 Budget Act of 1997 is amended—

4 (A) by striking subsection (c); and
5 (B) by redesignating subsection (d) as sub-
6 section (c).

7 (b) NO MARK-UP FOR PARENTERAL NUTRIENTS.—

8 (1) IN GENERAL.—Section 1881(b) (42 U.S.C.
9 1395rr(b)) is amended by adding at the end the fol-
10 lowing new paragraph:

11 “(12)(A) Intradialytic parenteral nutrients (including
12 related supplies and equipment), when provided to a pa-
13 tient determined to have end stage renal disease, shall not
14 be included as a dialysis service for purposes of payment
15 under any prospective payment amount or comprehensive
16 fee established under this section, and payment for such
17 item shall be made separately in the amount specified in
18 subparagraph (B).

19 “(B)(i) The amount specified in this subparagraph
20 is 80 percent of the lowest of the following, less the appli-
21 cable deductible amount:

22 “(I) The actual acquisition cost as defined in
23 clause (ii), to the person submitting the claim for
24 payment for the intradialytic parenteral nutrients.

1 “(II) The average wholesale price of such nutri-
2 ents, as determined by the Secretary.

3 “(III) For payments for nutrients furnished on
4 or after January 1, 2000, the median actual acquisi-
5 tion cost of all claims for payment for such nutrients
6 for the 12-month period beginning July 1, 1998.
7 The Secretary may adjust such median actual acqui-
8 sition cost to reflect changes in the cost of such nu-
9 trients due to inflation, to costs associated with the
10 proper administration of such nutrients, and such
11 other factors as the Secretary determines appro-
12 priate.

13 “(ii) For purposes of clause (i), the term ‘actual ac-
14 quisition cost’ means, with respect to such nutrients, the
15 cost of the nutrients at the time of purchase. Such term
16 includes appropriate adjustments, as determined by the
17 Secretary, for all discounts, rebates, or any other benefit
18 in cash or in kind (including travel, equipment, or free
19 products). The Secretary shall include an additional pay-
20 ment for administrative, storage, and handling costs.

21 “(iii) A physician, supplier, or other person may not
22 bill an individual enrolled under part B any amount other
23 than the payment amount specified in this subparagraph
24 (plus any applicable deductible and coinsurance amounts).

1 “(C)(i) No payment shall be made under part B for
2 intradialytic parenteral nutrients to a physician, supplier,
3 or other person whose bill or request for payment for such
4 nutrients does not include a statement of the physician’s,
5 supplier’s; or other person’s actual acquisition cost.

6 “(ii) A physician, supplier, or other person may not
7 bill an individual enrolled under part B any amount for
8 such nutrients for which payment may not be made pursu-
9 ant to clause (i).

10 “(D) If a physician, supplier, or other person know-
11 ingly and willfully in repeated cases bills one or more indi-
12 viduals in violation of subparagraph (B)(iv) or (C)(ii), the
13 Secretary may apply sanctions against that physician, sup-
14 plier, or other person in accordance with section
15 1842(j)(2).”.

16 (2) EFFECTIVE DATE.—The amendment made
17 by paragraph (1) applies with respect to payments
18 for intradialytic parenteral nutrients provided on or
19 after January 1, 1998.

20 (c) USE OF NATIONAL DRUG CODE NUMBERS IN
21 MEDICARE CLAIMS.—

22 (1) IN GENERAL.—The Secretary of Health and
23 Human Services shall modify the standard claim
24 form used under part B of title XVIII of the Social
25 Security Act for physicians’ services so that the form

1 provides for the reporting of the national drug code
 2 (NDC) number for any prescription drug for which
 3 such a number has been assigned.

4 (2) DEADLINE; EFFECTIVE DATE.—The Sec-
 5 retary shall make the modification under paragraph
 6 (1) in a manner so that the modified form applies
 7 to claims submitted on or after such date (not later
 8 than 6 months after the date of the enactment of
 9 this Act) as the Secretary specifies.

10 **SEC. 207. ADJUSTMENTS IN HOSPITAL PAYMENTS TO RE-**
 11 **FLECT EXCESS PAYMENT RESULTING FROM A**
 12 **FINANCIAL INTEREST WITH DOWN-STREAM**
 13 **FACILITIES.**

14 (a) IN GENERAL.—Section 1886(d)(5) (42 U.S.C.
 15 1395ww(d)(5)) is amended by adding at the end the fol-
 16 lowing new subparagraph:

17 “(K) In the case of a hospital that has a financial
 18 relationship described in section 1866(a)(1)(S) with one
 19 or more home health agencies or other entities, the Sec-
 20 retary shall provide for such a payment adjustment as
 21 may be necessary to ensure that the total payments under
 22 this title to the hospital and such entities during a fiscal
 23 year does not exceed the total payments that the Secretary
 24 estimates would have been made under this title during
 25 the fiscal year if the services furnished by such entities